

Comment Letter 0043

0043



Sea Point Letterhead
August 25, 2004

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Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

To Whom It May Concern:

Sea Point Townhomes (Sea Point) is an enclave of 237 homes overlooking Torrey Pines Reserve, Torrey Pines State Beach, and the State protected Los Penasquitos Lagoon State Preserve (Penasquitos Lagoon).

By this letter, the Board of Directors of Sea Point (the Association) officially states for the record that it unanimously opposes any proposed route that would run through Penasquitos Lagoon, and any route that would tunnel under Camino del Mar in the City of Del Mar. Specifically, the Association strongly opposes both "Camino del Mar tunnel" options (CDM/Penasquitos routes) contained in the California High Speed Rail Authority (CHSRA) draft EIR/EIS document.

The Association is joined in this opposition by a broad coalition of citizens and elected officials, including San Diego Mayor Dick Murphy, San Diego City Councilman Scott Peters (also a member of the Coastal Commission), the Torrey Pines Community Planning Board, the Torrey Pines Association, the City of Del Mar, the San Dieguito River Park Joint Powers Authority, and many others. In short, there is no community support whatsoever for expanding the railroad through Penasquitos Lagoon, yet your EIR document makes an absurd assertion that this "enjoys community support." We can only wonder at the fantastic nature of such a false statement.

We note that the CDM/Penasquitos routes violate the City of San Diego-approved community plan, and furthermore fundamentally violate the spirit and letter of the California Public Resources Code by causing permanent and irreparable harm to a protected wetlands resource, due to heavy construction impact, significantly increased train vibration, diesel emissions, noise pollution, habitat disruption, property value destruction, view shed desecration, and other harms.



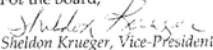
In short, these routes are a non-starter, and we strongly object to CHSRA or any other entity spending one additional cent to "study" routes that are so harmful that in our view they never will be selected.

Penasquitos Lagoon is part of Torrey Pines State Reserve, a unique natural and scenic resource that exists nowhere else in the world. It is unconscionable to continue CHSRA's aggressive campaign to wipe out forever this irreplaceable public resource. To "double track" this area, enabling more and more harmful heavy diesel passenger and freight trains to spoil the public's enjoyment, is not now and never will be acceptable to this community.

We also note that this plan offers no commensurate benefit to the community but that, even if it provided some *negligible* benefit, the immorality, fiscal recklessness, and environmental harm overwhelm any such small benefit.

CHSRA's plan also betrays the trust of taxpayers, by squandering hundreds of millions – perhaps billions – of dollars of scarce transportation funds on an obsolete technology that will require larger and larger public subsidies to operate, and which will have no observable benefit in terms of improving expected peak hour level of service on I-5. For similar reasons, this plan raises serious issues of unfair competition that could destroy public consensus for more efficient, more scaleable, more environmentally friendly alternative modes of transportation.

For these and other reasons, it is the view of the Association that CHSRA's CDM/Penasquitos routes constitute a violation of our City-approved community plan, make a mockery of the California Public Resources Code, are environmentally harmful to a state preserve, will materially and permanently harm residents in the City of Del Mar, the Del Mar terrace, and other established neighborhoods, and therefore strongly objects to these routes. By this letter, the Association calls on CHSRA, Caltrans, and others to immediately cease and desist from spending any further funds to study or promote the double tracking of Penasquitos Lagoon.

For the board,

Sheldon Krueger, Vice-President, for
Bob Berman
President
By Order of the Board of Directors

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0043-1

Response to Comments of Sheldon Krueger, V.P., Sea Point, August 25, 2004 (Letter O043)

O043-1

The LOSSAN Conventional Rail Improvements are not part of the proposed HST system in the Final Program EIR/EIS. These potential improvements are the subject of the Caltrans LOSSAN Rail Improvements Program EIR/EIS (Draft PEIR/EIS SCH # 2002031067). These comments have been forwarded to Caltrans for consideration. See standard response 6.41.1 and Section 2.6.9 and Chapter 6A of the Final Program EIR/EIS.



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

U.S. Department
of Transportation
**Federal Railroad
Administration**

Comment Letter O044

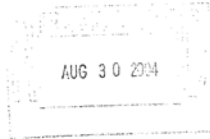
O044



TEJON RANCH COMPANY

August 26, 2004

Attn: California High Speed Rail
Draft Program EIR/EIS Comments
925 L. Street, Suite 1425
Sacramento, CA 95814



RE: Comments related to the "Draft Program Environmental Impact Report/Environmental Impact statement (EIR/EIS) for the *proposed* California High-Speed Train System"

Dear Ladies and Gentlemen:

Rather than undertaking a review and analysis regarding the overall technical adequacy of the Draft EIR/EIS document, which is currently being addressed by others, this letter will confine itself to addressing the legal adequacy of the document and its environmental analysis.

The EIR/EIS, as presented, is legally inadequate in the manner in which it conducts its analysis of the potentially significant impacts of the High Speed Rail System project. As such, the document is not in legal compliance with the requirements of the California Environmental Quality Act ("CEQA"), or the National Environmental Policy Act ("NEPA").

The document does not provide a sufficient level of detail in its analysis to allow the decision makers to come to an informed conclusion. Nor, does the document satisfy the public disclosure requirements provided for in CEQA Section 15003. The project description is inadequate. The project objectives do not conform with the objectives outlined in the State's authorization legislation. The analysis of the various alignment alternatives is confusing and inadequate. Additionally, the analysis included in the documents is often conclusory, and not supported by substantial evidence. It is important that the EIR/EIS correct these deficiencies in order to comply with CEQA.

This document does not comply with the NEPA requirement that an EIS develop and describe appropriate alternatives to the proposed project nor does it comply with NEPA Section 1502.14(e) which requires that the level of analysis accorded to each alternative be substantially similar to that of the proposed project.

While the Lead Agency may contend that any such shortcomings are due to the fact the document is a program level EIR with an expectation that individual project-level environmental reviews will be prepared at a later date, such an argument does not relieve the Lead Agency of its responsibility to provide sufficient information to make an informed decision

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Draft Program EIR/EIS Comments
Page 2
August 26, 2004

regarding the project as described. The EIR/EIS falls well short of this requirement. This deficiency is particularly glaring in relation to the analysis of the various routing alternatives. Sufficient information to make an informed decision regarding the various potential route alignments is not provided.

GENERAL COMMENTS

Prior to undertaking a review of the EIR/EIS it is necessary to understand the State's objectives in proposing the HST in the first instance. Such an understanding would allow for a determination as to whether such objectives are included in the EIR/EIS, and more importantly, how the implementation of those objectives might support one of the two proposed Bakersfield to Los Angeles alignments over the other.

Section 185000 et. seq. of the California Public Utilities Code provides for the creation of the High-Speed Rail Authority (Authority) and defines the Authority's responsibilities. Amongst the findings provided for in Section 185000, subsection (e) states that:

"Intercity rail service, when coordinated with urban transit *and airports*, is an efficient, practical, and less polluting transportation mode that can fill the gap between future demand and present capacity." (emphasis added)

Section 185030 goes on to delineate the basic objectives of the Authority as follows:

"The authority shall direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network, consisting of interlinked conventional and high-speed rail lines and associated feeder buses. *The intercity network in turn shall be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies, as well as other transit services*, through the use of common station facilities whenever possible." (emphasis added)

Section 185032 goes on to state that:

"The plan shall include an appropriate network of conventional intercity passenger rail service and shall be *coordinated with existing and planned commuter and urban rail systems*." (emphasis added)

Taken together, it is clear that these sections require that the planned HST be coordinated with, and connected to other transit systems (including airports), as well as other planned rail systems. Generally speaking, the EIR/EIS has endeavored to identify other transportation systems, including airports, found along the HST's proposed route. Unfortunately, however, the document does not take into consideration future plans for the Palmdale Airport.

O044-I

Comment Letter 0044 Continued

Draft Program EIR/EIS Comments
Page 3
August 26, 2004

The Palmdale Airport is not one of the seventeen airports considered in analyzing the State's transportation system (Figure 2.4-1).

While to some degree this might seem understandable, in that Palmdale currently does not have any scheduled commercial flights, it ignores the absolutely critical role that this airport will play in the future, as outlined in the Southern California Association of Governments' (SCAG) 2004 Regional Transportation Plan. In order to meet the Authority's mandated goal of providing for a "coordinated and connected" transportation system, inclusion of the future plans for this airport in the analysis of the two alternative HST alignments being addressed is absolutely essential.

In addition to the document's shortcomings related to the project's objectives, as was noted above, other aspects of the document are legally deficient. For the most part, the EIR/EIS is a conclusory document, without sufficient references to the source material which is being utilized to generate the environmental analysis. The appendices do not include the full range of material utilized in the analysis, thus depriving the decision makers and the public from access to all of the information pertinent to making an informed decision on the project.

The EIR/EIS lacks a legally sufficient project description. The Project description should set forth the physical characteristics of the proposed rail system.

Again, as noted above, the EIR/EIS should address the environmental impacts associated with the various route alignments in order to provide the decision makers with sufficient information to assess the differences between the alignments, or to choose the environmentally superior alternative.

The EIR/EIS fails to provide thresholds of significance or make findings of significance for many potential environmental impacts. In many cases, the EIR/EIS utilizes unique 'Methods of Evaluation' that deviate from thresholds found in CEQA Guidelines Appendix G, and are not in conformance with the legal requirements of CEQA.

Finally, the proposed mitigation measures found throughout the document are often legally deficient in that they are not, in fact, mitigation measures so much as they are suggestions for subsequent environmental review.

Following, is a section by section review of the legal deficiencies inherent in the current EIR/EIS document.

SECTION 1, PURPOSE and NEEDS and OBJECTIVES

In response to these statutory directives, in June 2000, the Authority published the High-Speed Rail System Business Plan (Business Plan). Chapter 5 of the Business Plan addresses the statutory mandates noted above and goes on to further refine and delineate the goals of the HST in calling for the enhancement of the efficiency of highways, freeways, airports etc. In fact, the third goal in Section 5.2 of the Business Plan calls for the maximization of

Draft Program EIR/EIS Comments
Page 4
August 26, 2004

connectivity to all other transportation services. Section 5.6 of the same chapter discusses the opportunity for intermodal connectivity, including connections to Ontario and Burbank airports. Unfortunately, the Business Plan has ignored this critical policy goal, at least as it relates to Palmdale Airport.

While the Purpose, Need and Objectives Section of the EIR/EIS, Section 1, spends a good deal of time and effort in discussing the importance of tying the development of the HST to the California airports located along the proposed route, Palmdale airport is not one of the airports identified (Figure 1.2-3), and, hence, has not been considered in the discussion and analysis related to the statutory policy goal of transportation system interconnectivity.

As outlined in the Southern California Association of Governments' (SCAG) 2004 Regional Transportation Plan's Regional Aviation Plan, due to the severe constraints on the possible expansion of the other existing airports in Southern California (an issue that is discussed in the EIR/EIS), SCAG's future plans call for the eventual commercial use of Palmdale Airport to accommodate up to 12.8 million annual passengers (MAP).

Additionally, while the EIR/EIS briefly addresses SCAG's plans for a Maglev rail system to connect the various regional airports and transportation systems, including a connection at the Palmdale Transportation Center, there is no comprehensive discussion relating to those transportation corridors where the HST and Maglev systems might overlap. This is particularly pertinent when considering the proposed Maglev connection between LAX and Burbank Airport with an extension connecting to the airport in Palmdale. Obviously, any such extension of the Maglev system would, over a good part of its route, overlap with the proposed HST. A single HST or Maglev connection between Burbank and Palmdale would clearly be more efficient and economical while generating fewer environmental impacts. The utilization of the SR-58 alignment would logically allow for this interconnectivity without the need to build a separate, Maglev rail connection.

Specific comments included within this section which would provide strong support for the SR-58 alignment over the I-5 corridor are as follows:

1.2.1 Identifies one of the project's objectives as being an interface with commercial airports to, amongst other things, "relieve" capacity constraints. Additionally, in discussing the project's consistency with federal transportation policy, the section notes such benefits as links to all major forms of transportation; and providing better access to airports. Finally, in discussing the project's conformity with the Authority's statutory mandate it is noted that the HSR will be coordinated with the State's transportation system, including airports, and will maximize "intermodal transportation opportunities" through connections to "local transit, airports, and highways." (emphasis added)

1.2.2 In discussing the need for the HSR, this section goes on to analyze the constraints placed upon the state's air traffic system due to the difficulties inherent in expanding existing airport facilities, while also discussing the limited existing connections between airports. While the SCAG transportation and LAX expansion plans are addressed in

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Comment Letter 0044 Continued

Draft Program EIR/EIS Comments
Page 5
August 26, 2004

some detail, no mention is made of the future use of Palmdale airport to relieve the capacity restraints at LAX and the other regional airports. Given the critical role that Palmdale airport will assume in the future, its absence from the EIR/EIS severely limits the decision maker's ability to utilize the document in properly analyzing the two Bakersfield to Los Angeles alignment alternatives.

SECTION 2, ALTERNATIVES

Section 2, of the EIR/EIS, titled "Alternatives" outlines the basis upon which the alternative analysis in the document will be undertaken. Unfortunately, that analysis is limited to the three overall alternatives provided for in the document: The "No Project Alternative," the "Modal Alternative," and the "High Speed Train Alternative."

While the section does include a discussion of the various alignment alternatives that have already been considered and rejected, the remaining alignment alternatives are not analyzed in a comprehensive fashion that would allow the decision makers to determine the environmentally superior alternative.

SECTION 3.1, TRAFFIC and CIRCULATION

In analyzing the two alternate alignments, the EIR/EIS states that the HST alternative would cause no significant change in levels of service in the Burbank airport area, ignoring the positive impact that Palmdale airport would have in alleviating growth pressures at the Burbank airport.

Additionally, and as has been discussed earlier, by not including the Palmdale airport in the analysis, the EIR/EIS does not recognize the true traffic and circulation improvements, both along the proposed route, as well as in other areas of the region, that would result from the connection to the Palmdale Transportation Center when utilizing the SR-58 alignment.

The EIR/EIS goes on to state that a comparative traffic analysis of the proposed alternative routes shows no significant difference between the two options. It would be our expectation that this would not be the case, in that the SR-58 alignment provides a significant opportunity to provide an alternative means of transportation for Antelope Valley commuters.

Additionally, the EIR/EIS provides an inadequate characterization of baseline transportation conditions and utilizes outdated regional forecasts to develop future baseline traffic conditions along the State Route 14 (SR-14) and Interstate 5 (I-5) study segments. For these facilities, traffic data relied upon to create the baseline condition dates to 1999; consequently the information is five years old.

This deficiency is compounded by the reliance on the Southern California Association of Governments (SCAG) traffic model to forecast travel behavior within the region. The model used by SCAG relies upon a regional land use database that contains land use information on existing and future development patterns for the five county Southern California

Draft Program EIR/EIS Comments
Page 6
August 26, 2004

region based on local General Plans. This model was last updated in 1997 and does not reflect recent large-scale development plans for the western Antelope Valley. For instance, in March of 2004, the County of Los Angeles released the Notice of Preparation for an EIR on the Centennial Specific Plan. The Centennial Specific Plan is proposed on approximately 12,000 acres of land located in the northwestern portion of the Antelope Valley in Los Angeles County. Buildout of this project would result in a maximum of 22,998 dwelling units, over 1.9 million square feet of commercial space, and 12 million square feet of employment generating space in the form of business parks. No consideration is given to this project, despite the fact that it would likely have a substantial influence on travel patterns along SR-14, State Route (SR-138), and I-5.

The EIR/EIS also does not provide sufficient level of detail in the analysis to permit informed decision-making and to satisfy the public disclosure requirements articulated under CEQA Section 15003. Nor does this document satisfy the requirements for the National Environmental Policy Act. Section 102(2)(E) of the National Environmental Policy Act requires that the responsible agency study, develop and describe appropriate alternatives to the proposed project. Section 1502.14(e) requires that the degree of analysis devoted to each alternative be substantially similar to that of the proposed project.

Clearly, this is not the case for this EIR/EIS. While the document identifies the operating condition of the primary freeway segments and interchange locations for the existing and no project alternative, it fails to provide this same level of analysis for the modal and high-speed rail alternatives in the main body of the document. Absent such information in the main body of the analysis, it is difficult for decision makers to conduct a meaningful evaluation comparing the merits and impacts of each alternative under consideration, or to determine which might be the environmentally superior alternative. This is a clear deficiency that must be addressed.

SECTION 3.1.1, REGULATORY REQUIREMENTS AND METHODS OF EVALUATION

This section does not describe the relevant NEPA requirements for preparation of this document, and does not address whether the analysis complied with any such NEPA requirements.

SECTION 3.2, TRAVEL CONDITION

This section includes extensive discussions regarding the impact that the HST project would have on air travel within the State of California. Again, since future use of Palmdale Airport is not considered, the analysis is inherently flawed, particularly as it relates to the discussion related to the Bakersfield to Los Angeles Sector. With that being said, however, this Section does go on to note that the potential Palmdale station would have a "particularly high impact" on connectivity due to its ability to serve the growing communities of the Antelope Valley.

It should also be mentioned, that despite the fact that the Palmdale Airport is not

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Comment Letter 0044 Continued

Draft Program EIR/EIS Comments
Page 7
August 26, 2004

considered in any aspect of the EIR/EIS document, this section, in discussing potential station locations, does mention that a station at the Palmdale transportation Center will maximize opportunities for intermodal connectivity because, amongst other things, it is close to the Airport and will provide the opportunity for "convenient shuttle or people mover connections."

SECTION 3.3, AIR QUALITY

There is no discussion regarding the relative differences in Air Quality impacts attributable to the alternative alignment options as otherwise addressed in the EIR/EIS. There is however, an analysis of the improvements in air quality attributable to the HST in comparison to the No Project and Intermodal alternatives. These improvements are separately classified for both roadways and air travel. Since Palmdale Airport is not included in the analysis, however, any improvements in air quality attributable to the movement of flights out of the LA basin, as well as improvements related to both local and airport HST ridership to the Palmdale Transportation Center has not been taken into consideration.

Two points should be noted regarding the route alignment options. First, the Air Quality Technical Evaluation does not identify which of the route options it used in evaluating the proposed project. Secondly, by not providing a separate evaluation for each route option, decision makers within the lead agency are unable to know the air quality impacts associated with each of these different routing options and will, therefore, not be able to make an informed decision, as it is expected that the different route alignment options will produce differing air quality impacts.

The lack of detail presented in the EIR/EIS extends to the characterization of baseline conditions. An EIR must describe the "environment in the vicinity of the project" as it exists before commencement of the project, from both a local and regional perspective. 14 Cal.Code of Regs §15125. Where basic information is missing from an EIR, the document is deficient as a matter of law. *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal.App.4th 713,734. The HST EIR/EIS is deficient for omitting basic information available about all criteria pollutants. Under the Federal Clean Air Act, the EPA regulates six criteria pollutants: ozone (O₃), carbon monoxide (CO), oxides of nitrogen (NO_x), oxides of sulfur (SO_x), particulate matter (PM) and lead. Under the California Clean Air Act, the California Air Resources Board regulates these same six criteria pollutants, as well as hydrogen sulfide, vinyl chloride, and visibility reducing particles. The EIR/EIS omits any description of existing air quality with respect to these last three elements. The EIR/EIS also understates the severity of the air quality experienced in the San Joaquin Valley Air Basin (SJVAB) as is summarized in Table 3.3-3. It would be helpful if the specific levels of nonattainment (e.g., moderate, serious, severe, extreme) were included in this table. Without this information, the reader may conclude that the severity of air pollution in all the listed nonattainment areas is identical, which it is not.

An additional measure of air quality is the emissions, or levels of, Hazardous Air Pollutants (HAPs, also called Toxic Air Pollutants (TACs) under California law) in ambient air. The ARB presently monitors and assesses the health risk of 10 HAPs in California, including acetaldehyde, benzene, 1,3 butadiene, carbon tetrachloride, chromium (hexavalent), para-dichlorobenzene, formaldehyde, methylene chloride, perchloroethylene, and diesel particulate

Draft Program EIR/EIS Comments
Page 8
August 26, 2004

matter. The EIR/EIS fails to describe any of these HAPs, the total amount produced in the Air Basins studied, or the potential health impacts attributable to the HAPs, despite the fact that such information is readily available. The EIR/EIS must discuss this issue.

The Air Quality Technical Evaluation only summarizes the analysis and does not contain information or data sets that would allow for a critical review of the analysis process or verify the quantitative results. This information needs to be presented in the Air Quality Technical Evaluation report supporting the findings in the California High-Speed Train Program EIR/EIS in order to provide public agencies and the public the ability to give meaningful comments on the adequacy and accuracy of the air quality evaluation.

On page 3.3-8 of the Program EIR/EIS, the discussion states that "detailed intersection information has not been generated" to facilitate an analysis of localized air quality impacts. This statement is incorrect. In Appendices Q through U of the "Traffic, Transit, Circulation & Parking Technical Evaluations" for each segment of the proposed project there is detailed intersection analysis that shows estimated volumes of traffic during the peak hour, estimated volume to capacity (V/C) ratios, and estimated level of service (LOS) values for each alternative. This information combined with emissions data from the EMFAC2002 computer model, and climate data (average temperature and wind speed) is all that is needed to conduct an analysis of localized air quality impacts.

The California Department of Transportation describes the state and national guidelines for conducting localized air quality impacts in a publication titled "Carbon Monoxide Protocol" (hereafter referred to as the Protocol). The Protocol requires that intersections impacted by the proposed project with LOS D or below conduct a detailed localized air quality impact analysis using the CALINE4 computer model. The Air Quality Technical Evaluation failed to conduct this analysis. *CEQA Guidelines* Section 15064 (d) requires that lead agencies consider both direct and indirect physical impacts when evaluating the potential for significant impacts. The Program EIR/EIS, in failing to address localized impacts even though all the information is available to do so, also failed to assess all of the reasonably foreseeable environmental impacts associated with the proposed project. This is a violation of CEQA and deprives both decision makers and the public of information on potential environmental impacts associated with the proposed project.

The air quality analysis does not address short-term construction impacts that would be associated with the proposed project. *CEQA Guidelines* Section 15126 states that "All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development [i.e., construction], and operation." While additional analysis may be required on a project by project-level analysis in the future, information is currently available to assess construction activities as a result of the proposed project on a programmatic level.

In addition, the EIR/EIS must compare the construction impacts of the route alignment options. This would help decision makers to understand and compare the construction impacts of the route options. The Air Quality evaluation in the Program EIR/EIS needs to address construction impacts on a programmatic level and propose programmatic mitigation

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Comment Letter O044 Continued

Draft Program EIR/EIS Comments
Page 9
August 26, 2004

measures.

The EIR/EIS did not establish clear thresholds of significance or make significance findings for air quality impacts. *CEQA Guidelines* Section 15126 requires that an EIR identify potentially significant environmental impacts associated with proposed projects. *CEQA Guidelines* Section 15064(b) requires that the lead agency make a determination of whether a project may have a significant effect on the environment based to the extent possible on scientific and factual data. *CEQA Guidelines* Section 15064.7 encourages lead agencies to "develop and publish thresholds of significance..." On page 7-4 of the Program EIR/EIS the discussion states that, "Given the planning-level impact analysis considered in this Program EIR/EIS, the Authority has not developed project-specific significance thresholds." While it may be true that the "Authority" has not developed its own significance thresholds, this does not alleviate the Program EIR/EIS from using significance thresholds in its evaluation and making a determination of significance related to air quality impacts. Since the Program EIR/EIS failed to make significance findings or establish significance thresholds for air quality impacts, the analysis in the Program EIR/EIS is in violation of CEQA.

SECTION 3.4, NOISE and VIBRATION

Again, without a discussion regarding the use of Palmdale Airport for commercial flight services, there is no analysis related to the positive noise and vibration impacts related to the movement of flights out of the LA Basin and into the new airport. Nor, is there any discussion related to the positive impact that a high speed rail connection to the Palmdale Transportation Center would have on the viability of those flight operations.

In considering the impacts related to the alternative alignments, the EIR/EIS describes both optional routes as having low potential noise impact ratings. The discussion does, however, go on to make the unsupported assertion that due to the greater amount of tunneling along the I-5 route, there would be fewer potential noise impacts along this route.

Additionally, operation of the rail line would generate noise levels in excess of 90 dB (A) when trains are operating at full velocity. While noise is generated by a variety of sources including wheel/rail interaction and motors/gears, the primary source is unsteady airflow that creates aerodynamic noise. The EIR/EIS fails to address potential impacts to biological resources known to occur in the Tehachapi Mountains despite the amount of literature that clearly establishes a link between noise levels and the integrity of habitat. This is a deficiency that must be addressed.

SECTION 3.5, ENERGY

There is no discussion regarding the relative differences in Energy impacts attributable to the alternative alignment options as otherwise addressed in the EIR/EIS. Although traffic data was available in the "Transit, Circulation & Parking Technical Evaluation" for each of the route alignment options, the "Draft Statewide Energy Technical Evaluation" did not assess impacts for each route alignment of the proposed project. This section does not allow the reader

Draft Program EIR/EIS Comments
Page 10
August 26, 2004

to determine, in a comparative fashion, the energy impacts of one alignment when compared to another. As written, there is no way for the reader to come to a conclusion that one alignment is environmentally superior to another.

The document does not make a determination as to the significance of energy impacts. *CEQA Guidelines* Section 15126 requires that an EIR identify potentially significant environmental impacts associated with proposed projects. *CEQA Guidelines* Section 15064(b) requires that the lead agency make a determination of whether a project may have a significant effect on the environment based, to the extent possible, on scientific and factual data. Since the EIR/EIS fails to make significance findings for energy impacts, the analysis in the Program EIR/EIS may be in violation of CEQA, and the Program EIR/EIS must be revised to include these findings and recirculated for public review.

The EIR/EIS also presents mitigation strategies for energy conservation. These mitigation strategies are so vague as to be meaningless. As an example, on page 3.5-22 of the Program EIR/EIS one mitigation strategy listed is "Use energy-saving equipment and facilities to reduce electricity demand." While the Program EIR/EIS is a broad program-level analysis reviewing potential energy use statewide, mitigation strategies this broad are of no value. The programmatic level analysis should identify regional impacts and find regional mitigation strategies designed to address those impacts.

SECTION 3.6, ELECTROMAGNETIC FIELDS and ELECTROMAGNETIC INTERFERENCE

There is no discussion regarding the relative differences in electromagnetic fields and electromagnetic interference impacts attributable to the alternative alignment options as otherwise addressed in the EIR/EIS. For consistency purposes the electromagnetic fields (EMF) and electromagnetic interference section should provide an existing conditions section associated with each of the alignment alternatives. If the alternatives alignments are proposed to travel through residential areas that should be discussed. The EIR/EIS states: "The study area for EMF/EMI associated with operation of the alternatives is limited to potentially affected land uses and populations in the vicinity of the alternative corridors." This is inconsistent with the analysis undertaken in other sections of the EIR/EIS.

SECTION 3.7, LAND USE AND PLANNING

The document fails to consider relevant plans in determining plan/land use compatibility on the Bakersfield to Los Angeles route, such as the Los Angeles County General Plan (current and draft update), the Angeles National Forest Land Management Plan, and the Kern County General Plan Update.

The method of evaluation used for land use compatibility and property impacts relies upon very broad and imprecise assessments of land use types, density categories, and proximity to Modal and HST alignment alternatives. The definitions of low, medium, and high

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O044-16

O044-17

Comment Letter O044 Continued

Draft Program EIR/EIS Comments
Page 11
August 26, 2004

compatibility and property impact rankings are so highly generalized as to make them almost meaningless in allowing the decision makers the opportunity to make informed decisions.

The method of evaluation used in this section does not conform specifically to the *CEQA Guidelines* Appendix G Land Use and Planning criteria, generally relied upon as the measures of land use and planning thresholds of impact significance. These criteria are:

- a) Physically divide an established community;
- b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; and
- c) Conflict with any applicable habitat conservation plan or natural community conservation plan.

Other than mentioning the general policies of many jurisdictions (unnamed) to promote transit and transit-oriented development, there is no meaningful discussion of local land use policies in this section.

Environmental Justice

Presidential Executive Order 12898, issued in February 1994, requires all federal agencies to analyze environmental justice impacts when proposing public projects. The analysis is intended to determine whether minority and low-income communities are unfairly burdened by project impacts, with the goal of using mitigation measures to create a level playing field. In 1999, Senate Bill 115 was passed making environmental justice a requirement of CEQA as well (PRC §.72000-72001). Despite the importance of this subject, the EIR/EIS does not even meet the most elementary NEPA requirements for this issue.

The EIR/EIS does not address specific impacts in the discussion of environmental justice. Rather the discussion of environmental justice merely addresses whether or not minority or low-income populations were located in areas adjacent to the proposed project alignments. The discussion never indicates what type of impacts will be endured by these populations and whether or not the proposed action is likely to have disproportionately high and adverse health or environmental effects on minority or low-income populations.

The document "Environmental Justice Guidance Under the National Environmental Policy Act," published by the Council on Environmental Quality, Executive Office of the President, requires that a determination needs to be made as to "whether a proposed action is likely to have disproportionately high and adverse human health or environmental effects on low-income populations, minority populations, or Indian tribes." Implicit within this mandate is that adverse health and environmental effects are to be identified.

It is difficult to see how the analysis and presentation of Environmental Justice

Draft Program EIR/EIS Comments
Page 12
August 26, 2004

issues in this section, both for the system alternatives and the HST alignment alternatives, meets the intent of Executive Order 12898, even at the program EIR/EIS level of review. Based on the information presented, it would not appear that these issues have been considered as required by EO 12898 "to the greatest extent practicable and permitted by law" in the EIR/EIS. No justification or explanation is provided for the conclusory statement that the HST system would not result in disproportionate adverse effects to minority or low-income populations.

SECTION 3.8, AGRICULTURAL LANDS

The discussion of the alternative alignments found in this section of the EIR/EIS notes that the I-5 alignment would encounter, and impact, a greater amount of farmland than the SR-58 option. While this conclusion would seem to suggest that the SR-58 alignment would be preferable in relation to this impact, the table included in the chapter (Table 3.8-1), which endeavors to quantify the potential impacts only addresses the Bakersfield to Los Angeles sector, without providing any information as to which of the two potential alignments is being analyzed, consequently the conclusion would not seem to be adequately supported.

Section 3.8.5, Mitigation Strategies, suggests that specific farmland mitigation strategies should consider measures such as 'protection or preservation off-site lands to mitigate conversion of farmlands or acquiring easements, or payment of an in-lieu fee'. In this instance, the ability to mitigate the I-5 HST alignment's impact on farmlands through creation of agricultural easements or other identified measures may be limited by appellate court findings in *Friends of the Kangaroo Rat v. California Department of Corrections* [111 Cal.App.4th 1400 (2003)]. In this case, the court held that the creation of an agricultural easement does not fall within the definition of "mitigation" set forth in *CEQA Guidelines* 15370. Prime farmland is considered a finite resource, the loss of which cannot be mitigated by payments to continue farming on other lands already being farmed. Further, the court noted that acquiring undeveloped land for conversion to agricultural use would likely have natural habitat impacts, which are not environmentally beneficial, and converting developed land to farmland was infeasible for obvious reasons.

Short of avoidance of important farmlands altogether, the impacts of the I-5 HST alignment option within the Bakersfield to Sylmar segment are likely to be found to be significant and unavoidable, should this alternative be carried forward to project-level environmental review.

SECTION 3.9, AESTHETICS and VISUAL RESOURCES

This section asserts that the SR-58 alignment would result in a greater number of cut and fill impacts, and therefore the visual impact along this alignment would be greater than along I-5. The document goes on to say, however, that both alignments would have high-contrast impacts and high potential shadow impacts, seemingly without making any attempt to compare the relative severity of those impacts along each route. Therefore the conclusory statement regarding the supposed greater level of impact along SR-58 is unsupported by analysis or evidence.

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